

**REMARKS**

Claims 1-8 and 10-22 are pending in this application. By the Office Action, claims 3, 4, and 10-22 are withdrawn from consideration as being directed to a non-elected invention. Applicants respectfully reserve the right to file a division application directed to the non-elected invention. Claims 1, 2 and 5-8 are rejected under art. Reconsideration and allowance of this application are respectfully requested.

**Claim Rejections - 35 USC § 102**

Claims 1, 2 and 5-8 are rejected under 35 USC § 102(e) as being anticipated by Watanabe et al. (hereinafter "Watanabe"), U.S. Patent 6,503,794. This rejection is respectfully traversed.

Foremost, Applicants note that on page 3, lines 10-21 in the Office Action, the Examiner referenced the prior art of Okumura and Suwanai (previously applied in the last Office Action). Applicants believe that the comments in the Office Action were in error, and responded to the current Office Action based only on Watanabe. If Applicants' assumption is incorrect, Applicants request further clarification.

Applicants submit that Watanabe failed to disclose or suggest a semi-conductor device, comprising, *inter alia*, "the first metal wiring having a first metal height and having a lower surface in a substantially planer orientation with a lower surface of the lower electrode", as recited in claim 1.

The Examiner allegedly asserted that a connecting member 31 corresponds to "a first metal wiring", and electric conductors 25 and 27 correspond to "a lower electrode". However, Applicants submit that the connecting number 31 and electric conductors 25, 27 are not in a substantially planer orientation. In other words, the lower surface of connecting member 31 ends at the high density P-type semiconductor area 17 and N-type well area 4<sup>1</sup>, and the lower surface of electric conductor 27 ends at the lower surface of insulating layer 33 (or the lower surface of electric conductor 25 ends at the lower surface of insulating film 23).<sup>2</sup>

Accordingly, Watanabe fails to disclose that the lower surface of the first metal wiring is in a substantially planer orientation with the lower surface of the lower electrode.

Further, Applicants submit that Watanabe also fails to disclose or suggest "the second sub-layer including a lower layer that is formed between the upper electrode and the first metal wiring", as recited in claim 1.

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<sup>1</sup> See FIG. 1 of Watanabe et al.

<sup>2</sup> See FIG. 1 of Watanabe et al.

The Examiner allegedly asserted that the insulating films 23, 33 and 37, and dielectric material 38 represents the “second insulating layer”, more specifically, the dielectric material 28 or insulating film 33 corresponds to the “second sub-layer”; and the insulating film 37 represents “an upper layer.” Applicants respectfully disagree.

Applicants submit that the dielectric material 28 of Watanabe is not “an insulating layer”; but rather a dielectric material used to form the storage capacity element C. In fact, the dielectric material 28 of Watanabe is similar to the dielectric material 128 found in Applicants’ invention.<sup>3</sup> Thus, the dielectric material 28 is not an insulating layer.

Even if the dielectric material 28 may be considered a second insulating layer (in which Applicants do not agree or admit to), it is submitted that Watanabe fails to disclose a “lower layer that is formed between the upper electrode and the first metal wiring”. Instead, Watanabe discloses either a dielectric material 28, an electrode conductor 27, or a wiring 32 formed between the upper electrode 29 and the first metal wiring 31; and no “lower layer”.<sup>4</sup>

Accordingly, Watanabe fails to disclose or suggest “the second sub-layer including a lower layer that is formed between the upper electrode and the first metal wiring”, as recited in claim 1.

Because Watanabe fails to disclose each and every feature of the claimed invention, it cannot provide a basis for a rejection under 35 USC § 102.

For at least these reasons, Applicants submit that claim 1 is patentable. Claims 2 and 5-8 are allowable by virtue of their dependency on claim 1, and for the features recited therein. Reconsideration and withdrawal of the rejections are respectfully requested.

### **CONCLUSION**

In view of the above, Applicants earnestly solicit reconsideration and allowance of all of the pending claims.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the telephone number of the undersigned below.

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<sup>3</sup> See FIG. 2 and paragraph [0044] of Watanabe et al.

<sup>4</sup> See FIG. 1 of Watanabe et al.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,  
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